

Pension Benefit Guaranty Corporation

§ 4062.8

(7) A copy of any plan of reorganization, whether or not confirmed, with respect to a case under title 11, United States Code, or any similar law of a state or political subdivision thereof, involving the person and occurring within 5 calendar years prior to or any time after the net worth record date.

(c) *Incomplete submission.* If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further removed from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

§ 4062.7 Calculating interest on liability and refunds of overpayments.

(a) *Interest.* Whether or not the PBGC has granted deferred payment terms pursuant to § 4062.8, the amount of liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each payment to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds.* If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the overpayment or 10 days prior to the termination date

until the date of the refund and is compounded daily.

(c) *Interest rate.* The interest rate on liability under this part and refunds thereof is the annual rate prescribed in section 6601(a) of the Code, and will change whenever the interest rate under section 6601(a) of the Code changes.

§ 4062.8 Arrangements for satisfying liability.

(a) *General.* The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Upon request.* If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of ERISA and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, may grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the request and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

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(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of ERISA at any time by filing a written request. The request must include the information specified in § 4062.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to “the net worth record date” in § 4062.6(b) shall be replaced by “the most recent annual anniversary of the net worth record date”; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) *Liability exceeding 30 percent of collective net worth.* If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to the liability, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of such persons. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the PBGC that no person subject to such liability has any individual pre-tax profits (within the meaning of section 4062(d)(2) of ERISA) for such person's last full fiscal year ending during that year.

(d) *Interest.* Interest on unpaid liability is calculated in accordance with § 4062.7(a).

(e) *Security during period of deferred payment.* As a condition to the granting of deferred payment terms, PBGC may,

in its discretion, require that the liable person(s) provide PBGC with such security for its obligations as the PBGC deems adequate.

§ 4062.9 Filing of documents.

(a) *Date of filing.* Any document (including information) required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC. If the conditions stated in both paragraphs (a)(1) and (a)(2) of this section are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Payments of liability shall be clearly designated as such and include the name of the plan. Such payments shall be sent to the address specified in the notification or demand for liability issued by the PBGC under § 4068.3 or, if not so specified, to the address provided, upon request, by the Investment Management Division, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Any document (including information) required or permitted to be filed under this part, except for documents relating to appeals, shall be submitted to the Insurance Operations Department, Pension Benefit Guaranty Corporation, at the above address. Any document submitted pursuant to part 4003 in connection with an appeal of an initial determination shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, at the above address.

§ 4062.10 Computation of time.

In computing any period of time prescribed or allowed by this subpart, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the